

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5357 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMEDBHAI A BOBAT

Versus

HEIRS AND LEGAL REPRESENTATIVE OF DECD.SHANKARBHAI RESHMABHAI

Appearance:

MR PV HATHI for Petitioners
MR JOY MATHEW for Respondent No. 1/1
None present for Respondents No. 2 to 5
MS SIDDHI TALATI for Respondent No.6

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/97

ORAL JUDGEMENT

1. This petition is directed by the petitioners feeling aggrieved of the order of the Gujarat Revenue Tribunal at Ahmedabad dated 2nd February, 1983 passed in Revision Application No.TEN.B.A.541/79 reversing thereunder the order of the Assistant Collector, Rajpipla dated 31-7-1979 and of the Mamlatdar and Agricultural

Lands Tribunal, Nanded, holding that there was no breach of provisions of sec.84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act, 1948').

2. The dispute pertains to the land of Survey Nos.7 and 25/Part of Village Naldhari in Valia Taluka of Broach district. The respondents No.1 and 2 are the heirs of the original occupant, Reshmabhai Bhuriabhai and respondents No.3, 4 and 5 are the heirs of the original landlord Rushi Nasserwanji Contractor. The order of purchase of the land in favour of the tenants, the respondents No.1 and 2 came to be passed in the year 1960 under sec.32G of the Bombay Tenancy and Agricultural Lands Act, 1948 by the Mamlatdar and Agricultural Lands Tribuna concerned. The tenants failed to pay the purchase price and hence the sale was declared ineffective. The possession of the land in dispute was handed over to its landlord in the year 1963 as per the provisions of sec.32-P (2)(b) of the Act, 1948 as it was then in force and entry to that extent being entry No.353, has been made on 4-9-1963 in the revenue record. The petitioners purchased the land in dispute under registered sale deed dated 5-8-1966 from the landlord and possession has been handed over. The names of the petitioners have also been entered in the revenue record on the basis of the aforesaid sale deed. After purchase of the said land, the petitioners have spent large amount in improvement thereof.

3. On 31st December, 1975, the respondents No.1 and 2 filed an application before the Mamlatdar and A.L.T. Nanded and two-fold issues were raised thereunder namely they have been illegally dispossessed from the land and the sale of the land by the original landlord is illegal. This application of the respondents No.1 and 2 came to be rejected by the Mamlatdar and A.L.T., Nanded vide its order dated 17-3-1976. The grounds given for rejection of the application by the said authority are that (i) the possession of the land was handed over to the landlord in the year 1963 as per the provisions of the Act, 1948 in force at that time and (ii) the amendment of 1965 made under sec.32-P(2) and (7) and (8) cannot be applied. Dissatisfied with the aforesaid order of the Mamlatdar and A.L.T., Nanded the respondents No.1 and 2 preferred an appeal being Appeal No.184/76 which came to be decided by the Assistant Collector, Rajpipla under its order dated 31st March, 1979 and the same has been dismissed. The matter was carried further by the respondents No.1 and 2 to the Gujarat Revenue Tribunal at Ahmedabad by resorting to the revisional jurisdiction of the said

Tribunal bearing Appeal No.TEN.B.A. 541. The revision application of the respondents No.1 and 2 was allowed. The Tribunal has found it to be a case of violation of sub-section (7) of Sec. 32 (P) of the Act, 1948 as amended in the year 1965 and subsequently in the year 1973. The Tribunal found the sale of the land in favour of the petitioner has been made in breach of the aforesaid provisions as it has been made without obtaining the prior permission of the Collector. Further order has been made that the relevant land owners and the relevant purchasers from them i.e. the petitioners herein and the respondents No.3, 4 and 5 are liable to be evicted and that the lands have to be disposed of in accordance with the provisions of sec.84(C) by the learned Mamlatdar. Hence, this special civil application.

4. This special civil application has been admitted by this Court on 4-3-1985 and interim relief in terms of Para-12(D) has been granted. Para-12(D) of this special civil application reads as under:

to stay the operation, implementation and enforcement of the impugned judgment and order dated 2nd February, 1983, passed by the Gujarat Revenue Tribunal in revision application No.TEN.B.A. 541 of 1973 (Annex. 'C') pending the hearing and final disposal of this petition;

So the operation, implementation and enforcement of the order of the Gujarat Revenue Tribunal at Ahmedabad in Revision Application No. TEN.B.A. 541 of 1973 is stayed and this stay continues till this date.

5. The learned counsel for the petitioner contended that the revision application before the Tribunal was not maintainable. Referring to the provisions of Sec.32-P of the Act, 1948, the counsel for the petitioners contended that the revision lies with the State Government. It has next been contended that the Tribunal has committed serious error in proceeding as if the respondents No.1 and 2 had started the proceedings under sec.84(C) of the Act, 1948. Lastly, the counsel for the petitioners contended that the respondents No.1 and 2 have no right whatsoever much less a vested right or accrued right of reversion of the land in dispute to them. They have in the year 1960, though the sale of the land was ordered to be made in their favour, failed to pay the purchase price and consequently the sale was declared ineffective by the concerned officer. Thereafter the land has been sold in the year 1966 to the petitioners by the landlord on which

this land was reverted to them and the present proceedings were initiated after about nine years of the sale. These proceedings were initiated malafide by the respondents No.1 and 2 to get the undue advantage of the situation. The respondents No.1 and 2 are not the bonafide persons. However, there is a contravention that the sale has been effected by the landlord without prior approval of the Collector, and as such, this could have been done now also.

6. On the other hand, the counsel for the respondent No.1/1 Shri Joy Mathew contended that the sale of the land in dispute in favour of the petitioners is void-ab-intio, and as such, no relief should be granted to the petitioners.

7. Having heard the learned counsel for the petitioners and the respondent No.1/1 and after perusing the special civil application and the order impugned therein I am satisfied that the Tribunal has committed an error in passing the order against the petitioners. The learned counsel for the respondent No.1/1 very fairly conceded that there is no provision in the Act, 1948 where when the sale of the land in favour of the petitioners is declared illegal it is automatically reverted back to the tenants. The counsel further admits that the present proceedings out of which this special civil application has arisen has been initiated after about nine years of the date of the sale deed. The counsel for the respondent No.1/1 has also fairly conceded that the sale, gift, exchange deed or assignment or partition of the land in dispute is not prohibited altogether but the land of the description herein was only transferable with the previous sanction of the Collector and on payment of such amount as the State Government may by general or special order determine.

8. The respondents No.1 and 2 were declared to be deemed purchaser of this land under sec.32-G of the Act, 1948 way back in the year 1960, but they have failed to pay the purchase price and therefore the sale in their favour was declared ineffective. It is true that the sale of the land in dispute has been made in favour of the petitioner by the landlords after amendment of Sec.32-P of the Act, 1948 and it has been made without previous sanction of the Collector, but this Court cannot be oblivious of the fact that the respondents No.1 and 2 have taken these proceedings in the matter after nine years of the sale. Further this land will not be reverted back to the respondents No.1 and 2 automatically even if the sale deed is declared to be illegal.

9. The petitioners are an agriculturist on which point the parties are not on issue. Not only the delay is of nine years in initiating proceedings in the matter but there is another aspect that for all these 31 years the petitioners are in possession of the land and are cultivating the same. However, it is correct that after the order of the Tribunal, the petitioners are in possession of the land under the interim order of this Court but the fact is that for last 31 years they are there. There is another fact that since 1963, the respondents No.1 and 2 are not in possession of the land. In a given case the respondents-landlords were cultivating the land personally but they have sold out this land to the petitioners. After the amendment in the Act where such a sale was permissible only with prior sanction of the Collector. In this case because of its peculiar facts appropriate course would have been to send the matter to Collector to consider the matter for post-facto approval of the sale made by the respondents No.3 to 5 in favour of the petitioners. In sub-section (8) of sec.32-P of the Act, 1948, I find that the Collector has power to give the sanction on payment of such amount as the State Government may by general or special order determine. In the peculiar fact of this case i.e. the respondents No.1 and 2 themselves have at one point of time in the year 1960 declined to purchase the land as well as after sale of more than nine years of the same to the petitioners they initiated these proceedings, I consider it to be appropriate that this exercise under sub-section (8) of sec.32-P of the Act, 1948 may now be undergone. The petitioners have made a statement as a fact that they invested huge amount in development of the land and which fact has not been disputed and otherwise also naturally for the period from 1966 to 1975, the petitioners would have certainly spent the amount for development of the land. As I am taking this view in the peculiar facts of this case, I do not consider it necessary to advert to all other contentions raised by the learned counsel for the petitioners in the special civil application.

10. In the result, this special civil application is allowed and the order of the Gujarat Revenue Tribunal dated 2-2-1983 is quashed and set aside. The Collector, Baroda is directed to take the matter for grant of post-facto sanction to the sale of the land in dispute by the respondents No.3 to 5 to the petitioners under sub-section (8) of sec.32-P of the Act, 1948 and in case he grants the post-facto sanction then the petitioners shall pay the amount as determined by the Collector

within reasonable period. The petitioners shall further pay interest on the said amount at the rate of 12% from the date of purchase. In case the post-facto sanction is not given by the Collector to the sale of the land in dispute in favour of the petitioners then a reasoned order may be passed and copy of the same may be sent to the petitioners by registered post. The special civil application and Rule stand disposed of accordingly with liberty to the petitioners for revival of this special civil application in case of difficulty.

zgs/-